

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ELLIOTT C. WASDON,

Defendant and Appellant.

B218842

(Los Angeles County  
Super. Ct. Nos. BA326282,  
BA286996)

APPEALS from judgments of the Superior Court of Los Angeles County, Barbara R. Johnson, Judge. Affirmed with directions.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan Sullivan Pithey and Taylor Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

---

## INTRODUCTION

Defendant Elliott C. Wasdon appeals from a judgment of conviction entered after a jury trial and from the judgment revoking his probation and imposing a prison term in a separate case. In No. BA326282, defendant was charged with three counts of first degree burglary (Pen. Code,<sup>1</sup> § 459; counts 1-3) and two counts of second degree commercial burglary (*ibid.*; counts 4-5). The information alleged, as to all counts, that defendant had suffered two prior felony convictions within the meaning of the “Three Strikes” law (§§ 667, subds. (b)-(i), 1170.12) and he had served three prior prison terms (§ 667.5, subd. (b)). As to counts 1 through 3, the information further alleged that defendant had two prior serious felony convictions (§ 667, subd. (a)).

Initially, the trial court appointed a public defender to represent defendant. Months later, in February 2008, the trial court granted defendant’s request to exercise his right of self-representation. In June 2008, after defendant told the court he was not competent to continue without an attorney in the upcoming trial, the court revoked his self-represented status and appointed a different public defender to represent him.

The first trial ended in a mistrial in September 2008. Prior to the second trial, the trial court granted the People’s motion to dismiss count 1. Following a second jury trial in May 2009, the jury rendered verdicts of guilty on all charges. The jury then found the prior strike, prior prison term, and prior serious felony allegations to be true.

The trial court sentenced defendant to a total state prison term of twenty years and eight months. On count 2, the court imposed the midterm of four years, doubled to eight years under the “Two Strikes” law,<sup>2</sup> plus five years for each of the prior serious felony convictions. On count 3, the court imposed a consecutive term of 16 months (one-third

---

<sup>1</sup> All further statutory references are to the Penal Code.

<sup>2</sup> The prosecutor decided to treat this as a Two Strikes case, and the second serious felony conviction was used only to impose a five-year enhancement under subdivision (a) of section 667.

the midterm of 48 months), doubled to 32 months as a second strike. On counts 4 and 5, the court imposed concurrent midterms of two years, doubled to four years as second strikes. The court stayed imposition of the prior prison term enhancements. The court ordered defendant to pay a restitution fine of \$200 (§ 1202.4, subd. (b)), and imposed and stayed a corresponding parole revocation fine (§ 1202.45). The court awarded defendant a total of 912 days of presentence custody credits, consisting of 760 days of actual custody and 152 days of conduct credits.

In the probation violation case (No. BA286996),<sup>3</sup> the court imposed a concurrent term of eight years. The court awarded defendant a total of 1,553 days of presentence custody credits, consisting of 1,189 days of actual custody and 364 days of conduct credits.

Defendant contends the trial court violated his right to self-representation guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution when the court appointed the new public defender in June 2008. Defendant further contends the Fourteenth Amendment and section 1043 require reversal, in that the trial court allowed him to be absent from the trial on the prior conviction allegations without obtaining a written waiver. Defendant contends, and the People agree, that the sentences for the prior prison enhancements should be stricken pursuant to section 1385, subdivision (a). Lastly, defendant contends that the trial court's award of presentence conduct credits must be increased under the amended version of section 4019, which became effective after his sentencing hearing.

---

<sup>3</sup> This case arose out of a 2005 conviction of residential burglary.

## FACTS<sup>4</sup>

### **A. Case No. BA326282**

#### **1. Count 3: The Café Metropol Burglary**

Angie An (An) owns the Café Metropol, located at 923 East Third Street in Los Angeles. After receiving a call from the alarm company for the café on July 14, 2007 around 3:40 a.m., she went to the café and discovered someone had broken into it. She called the police.

When the police searched the café, they determined that approximately 50 bottles of wine and a garbage can were missing, and the heavy duty commercial front door had been pried open and was mangled. The surveillance video showed two people entering the restaurant after prying the front door open and later dragging out a garbage can. Another view showed two people walking with a cart down the alley.

#### **2. Count 4: The A-American Self Storage Burglary**

At about 10:40 a.m. on July 24, 2007, Pedro Lizardo (Lizardo), manager of A-American Self Storage located at 300 Avery Street in Los Angeles, discovered someone had broken into the building and a compressor, tool box and an extension cord, as well as plastic bags and boxes, were missing. When he reviewed videos from the business's surveillance system, he recognized the burglar as someone who used to walk the neighborhood with a shopping cart, collecting empty cans. Lizardo drove around the area and saw defendant pushing a shopping cart nearby. After calling the police, Lizardo followed defendant to the Midnight Mission but then lost track of him. Review of other surveillance video showed the burglary and defendant.

---

<sup>4</sup> The facts are set forth briefly, given that defendant raises no contentions as to the sufficiency of the evidence.

### **3. Counts 1 and 2: The Burglary of the Stagsdill and Foley Residences**

On July 26, 2007, Randall Stagsdill, who lived at an apartment complex at 810 East Third Street in Los Angeles, was awakened during the night by a loud noise. He got up and discovered the front door was open, the kitchen window he had left slightly ajar was pulled wide open, and someone had taken his books and tools from a bookshelf.

Shea Foley lived in the same apartment complex. His bike was stolen from the laundry room the same night.

Los Angeles Police Officers Luiz Garcia and Antonio Gutierrez responded to a burglary call at the apartment complex. While parking upon arrival, they saw defendant walking out of a door, carrying power tools and a toolbox. They placed him under arrest.

#### **B. Case No. BA286996**

In 2005, defendant pled no contest to one count of first degree residential burglary (§ 459) and admitted two prior prison terms (§ 667.5, subd. (b)). He agreed to a sentence of the high term of six years plus two consecutive one-year terms for the prior prison term enhancements. The trial court suspended the execution of the sentence and granted defendant probation for five years. The court awarded defendant 276 days of presentence custody credits.

On July 27, 2009, after his conviction in case No. BA362282, defendant made a motion to withdraw his plea in case No. BA286996. The trial court denied the motion. Defendant waived his right to a hearing on the probation violation. The court found him in violation of his probation and revoked it.

## DISCUSSION

### ***A. Termination of Self-representation and Appointment of Public Defender***

Defendant contends that the trial court erred in terminating his right of self-representation at the June 3, 2008 hearing, and such error is reversible per se. We disagree.

#### **1. Factual Background**

The record reveals that when defendant's case began in mid-2007, the trial court appointed a public defender to represent him. In late February 2008, defendant waived his right to counsel and the court granted his request to proceed in pro. per. On June 3, at a motions hearing about 10 days prior to the trial date, defendant complained that he had been forced to represent himself because he had not been properly represented by the public defender. As the court began explaining its decision on the motions, defendant continued raising the complaint as an excuse for interrupting and disagreeing with the court, despite the court's admonishments to allow the court to speak. As a result, the court had defendant removed from the courtroom.

After reentering the courtroom later, defendant said to the court: "I don't have the assistance of counsel that I need. [¶] . . . I don't feel like that I'm qualified to represent myself in no trial. I just wanted to come in and get some motions done that weren't being done." The court responded: "Sir, I agree . . . . You have just stated to the court that you are not competent enough to represent yourself at trial. Your pro. per. status is terminated. Public defender's office is reappointed."<sup>5</sup> The new public defender represented him throughout the first trial, the motion for mistrial, and the second trial.

---

<sup>5</sup> The exchange between defendant and the court continued when defendant said: "The public defenders don't represent me."

The court responded: "Yes, they do now. You don't represent yourself any longer based on your statement that you are not competent to represent yourself."

During the trial proceedings, however, in September 2008, defendant requested appointment of new counsel, which he later explained was a request to return to self-representation for a second time. After a *Marsden*<sup>6</sup> hearing, the court rejected the request as untimely. The public defender continued representing defendant until the sentencing hearing on May 27, 2009, when defendant requested self-representation for the third time. The court<sup>7</sup> granted defendant's request, after urging him not to change to pro. per. status for the sentencing phase due to the significant dangers involved.

## 2. Discussion

A criminal defendant has a right to counsel in criminal proceedings under the Sixth and Fourteenth Amendments to the United States Constitution. (*Mempa v. Rhay* (1967) 389 U.S. 128, 134 [88 S.Ct. 254, 19 L.Ed.2d 336]; *Gideon v. Wainwright* (1963) 372 U.S. 335, 343-344 [83 S.Ct. 792, 9 L.Ed.2d 799].) A criminal defendant also has the constitutional right to waive his right to counsel and, instead, to represent himself. (*Faretta v. California* (1975) 422 U.S. 806, 819 [95 S.Ct. 2525, 45 L.Ed.2d 562] (*Faretta*); *People v. Marshall* (1997) 15 Cal.4th 1, 20.) The right of self-representation is

---

When defendant said that he meant only for trial, the court reminded him that the trial was in 10 days. Defendant said: "A public defender has never represented me. . . ."

The court replied: "Sir, you cannot come to court, say you want an attorney, the court appoints one, then say you want to go pro per but you only want to go pro per for a period of time because you are not competent in the law to represent yourself at trial. You cannot and I will not allow you to manipulate the system. [¶] Based on your statement, your pro per status is terminated. The public defender's office is appointed." Defendant objected, saying that he had a conflict of interest with the public defender's office.

After a recess, the court brought in a public defender new to the case. The court gave defendant the choice to be represented by the new public defender or his former public defender. Defendant agreed to the new public defender.

<sup>6</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

<sup>7</sup> This was the trial judge, not the judge who conducted the pretrial proceedings.

not, however, absolute. (*Indiana v. Edwards* (2008) 554 U.S. 164, \_\_\_\_ [128 S.Ct. 2379, 2384; 171 L.Ed.2d 345].)

The trial court has discretion, under limited circumstances, to deny or revoke a defendant's request for self-representation. (*People v. Davis* (1987) 189 Cal.App.3d 1177, 1201, disapproved on another ground in *People v. Snow* (1987) 44 Cal.3d 216, 225.) The court may revoke the right if the defendant misuses his right, such as by causing unwarranted disruption or delay in court proceedings, or as an excuse for his inability or unwillingness to comply with the relevant rules of procedural and substantive law. (*Faretta, supra*, 422 U.S. at pp. 834-835, fn. 46.) If a defendant requests revocation in favor of having counsel appointed, the court may terminate his self-representation. (*Davis, supra*, at p. 1201.) The court's exercise of discretion will not be disturbed on appeal absent a showing of clear abuse. (*Ibid.*) If the denial of a request for self-representation or the revocation of pro. per. status is erroneous, however, the subsequent judgment is reversible per se. (*People v. Butler* (2009) 47 Cal.4th 814, 824-825.)

Just as defendant was entitled to waive his right to counsel at the February 2008 hearing, he was entitled to waive his right of self-representation at the June 2008 hearing. (*Faretta, supra*, 422 U.S. at p. 819; *People v. Marshall, supra*, 15 Cal.4th at p. 20.) Defendant's Sixth Amendment rights did not entitle him, however, to disrupt and delay court proceedings by exercising his rights to counsel and to self-representation on an alternating basis throughout the proceedings, depending on his own belief in his competence, or preference, to handle some matters before the court, but not others. (*People v. Clark* (1992) 3 Cal.4th 41, 115.) Each request by defendant to the trial court to change his representation status presented the possibility of error which would render the outcome of the court proceedings reversible per se. (*People v. Butler, supra*, 47 Cal.4th at pp. 824-825.) Although *Faretta* held generally that a criminal defendant has a constitutional right to represent himself, it "did not establish a game in which defendant can engage in a series of machinations, with one misstep by the court resulting in reversal of an otherwise fair trial." (*Clark, supra*, at p. 115.)

We conclude that the trial court did not abuse its discretion when it revoked defendant's pro. per. status at defendant's own request, particularly in light of his statement that he was not competent to take his case to trial. (*Martinez v. Court of Appeal of Cal., Fourth Appellate Dist.* (2000) 528 U.S. 152, 162-163 [120 S.Ct. 684, 145 L.Ed.2d 597].)

Defendant's reliance on *People v. Butler*, *supra*, 47 Cal.4th 814 is misplaced. In *Butler*, the trial court revoked the defendant's pro. per. status, over his informed and knowing objections, based on the trial court's opinion that heightened restrictions on the defendant's housing and movements presented too great an obstacle for the defendant to have the type of access to the resources he would need in order to represent himself effectively. (*Id.* at p. 823.) The Supreme Court reversed the judgment on the basis that a trial court must permit a defendant to represent himself when he makes a timely motion to do so and makes a knowing and voluntary waiver of the right to counsel, regardless of how unwise the defendant's choice may be. (*Id.* at pp. 824-825.) By contrast, in the instant case, the basis for the trial court's revocation was not its own opinion, but rather defendant's opinion that he was not competent to take his case to trial.

#### **B. Defendant's Voluntary Absence from Jury Trial on Prior Convictions**

Defendant contends that the federal due process clause (U.S. Const., 14th Amend.) and section 1043 require reversal of the jury's true findings to the prior conviction allegations, because the trial court allowed defendant to be absent from the jury trial on the allegations without obtaining a written waiver from defendant. Again, we disagree.

At the time set for the start of trial on the prior conviction allegations, the following exchange between the trial court and defendant occurred in lockup in the presence of defendant and his attorney, but out of the presence of the jury:

"The Court: Mr. Wasdon, we're on the record in *People v. Wasdon*. We're in lockup. It's my understanding that you do not want to come out for your trial as it relates to the priors.

"The defendant: No, I do not want to come out.

“The Court: Okay. We’re going to proceed without you. Do you understand that?

“The defendant: Yes, I do.

“The Court: And you don’t want to be present?

“The defendant: No, I do not.

“The Court: All right. Thank you.”

The jury trial on the prior conviction allegations then proceeded in the courtroom in defendant’s absence.

A criminal defendant’s right to be personally present at trial is protected under both the federal and state Constitutions. (U.S. Const., 6th & 14th Amends.; Cal. Const., art. I, § 15; *People v. Gutierrez* (2003) 29 Cal.4th 1196, 1202.) It is well-settled that a defendant’s knowing and voluntary waiver of his presence at trial is not a federal or state constitutional error. (*People v. Jackson* (1996) 13 Cal.4th 1164, 1209-1210; see *People v. Rundle* (2008) 43 Cal.4th 76, 135, overruled on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) The defendant’s waiver of his constitutional rights is effective, even if it is oral (*Rundle, supra*, at pp. 134-135) or implied from the defendant’s conduct (*People v. Concepcion* (2008) 45 Cal.4th 77, 82, 84).

As the above-quoted exchange shows, defendant orally and unequivocally waived his right to be present at the trial on the prior convictions allegations. There was no violation of his federal or state constitutional rights to be present at trial. (*People v. Rundle, supra*, 43 Cal.4th at pp. 134-135.)<sup>8</sup>

A criminal defendant also has statutory rights to be present at trial. Defendant argues that section 997, subdivision (b)(1), and section 1043, subdivision (a), required defendant to be personally present unless he executed a written waiver of his presence.

---

<sup>8</sup> In his opening brief, defendant states that he “recognizes this Court is bound by *People v. Rundle, supra*, 43 Cal.4th 76 and makes this argument to preserve it for purpose of a petition for review to the California Supreme Court and federal habeas review.”

Section 977, subdivision (b)(1), mandates that a defendant charged with a felony must be personally present at all court proceedings unless, with leave of court, the defendant executes a written waiver of the right to be personally present.<sup>9</sup> Section 1043, subdivision (a), requires a defendant in a felony case to be personally present at the trial, subject to exceptions specified in other subdivisions.<sup>10</sup> One exception is “voluntary absence.” Specifically, after the trial on noncapital felony charges has commenced in the defendant’s presence, the defendant may be voluntarily absent from the trial. (§ 1043, subd. (b)(2).) The statute serves to prevent the defendant from intentionally disrupting the orderly processes of his or her trial because he has decided not to attend. (*People v. Concepcion, supra*, 45 Cal.4th at p. 83.)

In *People v. Gutierrez, supra*, 29 Cal.4th 1196, the Supreme Court explained that the two statutes “do not conflict; rather, executing a written waiver and being voluntarily absent are treated as different events under these two statutes.” (*Id.* at p. 1204, fn. omitted.) The Court held “that section 977, subdivision (b)(1)’s presence requirement

---

<sup>9</sup> Section 977, subdivision (b)(1), provides, in pertinent part: “In all cases in which a felony is charged, the accused shall be present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present, as provided by paragraph (2).”

<sup>10</sup> Section 1043 provides, in pertinent part: “(a) Except as otherwise provided in this section, the defendant in a felony case shall be personally present at the trial. [¶] (b) The absence of the defend[a]nt in a felony case after the trial has commenced in his presence shall not prevent continuing the trial to, and including, the return of the verdict in any of the following cases: [¶] . . . [¶] (2) Any prosecution for an offense which is not punishable by death in which the defendant is voluntarily absent. [¶] . . . [¶] (d) Subdivisions (a) and (b) shall not limit the right of a defendant to waive his right to be present in accordance with Section 977. [¶] (e) . . . If there is no authorization pursuant to subdivision (a) of Section 977 and if the defendant fails to appear in person at the time set for trial or during the course of trial, the court, in its discretion, may . . . [¶] . . . [¶] (4) Proceed with the trial if the court finds the defendant has absented himself voluntarily with full knowledge that the trial is to be held or is being held.”

does not preclude a defendant from being ‘voluntarily absent’ during the taking of evidence under section 1043, subdivision (b)(2).” (*Gutierrez, supra*, at p. 1203.) Under section 977, subdivision (b)(1), “a trial may commence even in the defendant’s absence if the defendant executes a written waiver.” (*Gutierrez, supra*, at p. 1203.) Once a trial has commenced in the defendant’s presence, however, section 1043, subdivision (b)(2), authorizes the trial court to continue the trial notwithstanding the defendant’s voluntary absence from the proceedings. (*Gutierrez, supra*, at p. 1203.)

It is undisputed that the trial proceedings in defendant’s case commenced well before the date on which defendant told the court that he did not want to be present at the prior convictions trial. Thus, the written waiver provisions of section 977, subdivision (b)(1), did not apply and, under section 1043, subdivision (b)(2), the trial court could properly proceed with the trial if the court determined that defendant’s absence was voluntary. (*People v. Gutierrez, supra*, 29 Cal.4th at pp. 1203-1204.)

“The role of an appellate court in reviewing a decision to proceed with trial in a defendant’s absence is a limited one. . . . [T]he scope of review is restricted to whether, under the totality of the circumstances, the trial court’s determination [of voluntary absence was] supported by substantial evidence.” (*People v. Concepcion, supra*, 45 Cal.4th at p. 84.) The record of the exchange between the court and defendant provides substantial evidence that defendant’s absence was voluntary. We conclude that the trial court did not err in proceeding with the jury trial on the prior conviction allegations in the voluntary absence of defendant, but without a written waiver from him.

### **C. Prior Prison Term Enhancements**

Defendant contends, and the People agree, that the trial court should have stricken rather than stayed the three prior prison term enhancements imposed under section 667.5, subdivision (b). We also agree.

“Once the prior prison term is found true within the meaning of section 667.5[, subdivision] (b), the trial court may not stay the one-year enhancement, which is mandatory unless stricken. [Citations.]” (*People v. Langston* (2004) 33 Cal.4th 1237,

1241.) The failure to either impose or strike such a prior prison term enhancement is a jurisdictional error which may be corrected for the first time on appeal. (*People v. Garcia* (2008) 167 Cal.App.4th 1550, 1562.) The prior prison term enhancements under section 667.5, subdivision (b), must therefore be stricken.

#### **D. Application of Section 4019 to the Calculation of Presentence Custody Credits**

Defendant contends that his presentence custody credits must be increased by retroactive application of the new formula required by section 4019, as amended, effective as of January 25, 2010 (January 2010 version). Defendant was sentenced on August 25, 2009 based on the formula dictated by section 4019 as it was in effect at the time of sentencing (original version). The formula for calculating presentence conduct credits in that version of section 4019 was to give two days of credit for each six-day period a prisoner was in custody. (§ 4019, subds. (b), (c).) As noted previously, in No. BA326282, the court awarded defendant a total of 912 days of presentence custody credits, consisting of 760 days of actual custody and 152 days of conduct credits. In No. BA286996, the court awarded defendant a total of 1,553 days of presentence custody credits, consisting of 1,189 days of actual custody and 364 days of conduct credits.<sup>11</sup>

The January 2010 version changed the formula to give two days of credit for each four-day period in custody (§ 4019, subds. (b)(1), (c)(1))<sup>12</sup> in general, but to leave the formula as in the original version, that is, to give two days of credit for each six-day period in custody, for calculation of credit for any prisoner who “is required to register as

---

<sup>11</sup> The trial court apparently erroneously believed that section 667, subdivision (c)(5)’s 20 percent limitation on credits in a Two or Three Strikes case applied to presentence conduct credits. It does not apply “until the defendant is physically placed in the state prison.” (*Ibid.*)

<sup>12</sup> Defendant contends that recalculation of the presentence custody credits in accordance with the January 2010 version would result, for case No. BA326282, in a total of 1,520 credits, consisting of 760 actual custody credits and 760 conduct credits. For case No. BA286996, defendant claims the result would be a total of 2,377 credits, consisting of 1,189 actual custody credits and 1188 conduct credits.

a sex offender pursuant to . . . Section 290 [et seq.], was committed for a serious felony, as defined in Section 1192.7, or has a prior conviction for a serious felony, as defined in Section 1192.7, or a violent felony, as defined in Section 667.5.” In both Nos.

BA326282 and BA286996, defendant was convicted of first degree residential burglary (§§ 459, 460, subd. (a)). The offense is identified in section 1192.7, subdivision (c)(18), as a serious felony. Accordingly, calculation of defendant’s presentence custody credits in accordance with the January 2010 version would be according to the same formula in effect at the time of defendant’s sentencing.<sup>13</sup>

The calculation of defendant’s presentence custody credits using the formula in subdivisions (b)(2) and (c)(2) of the January 2010 version (which is the same as the formula in subdivisions (b) and (c) of the original version), and applying the methodology set forth in *In re Marquez* (2003) 30 Cal.4th 14, 26,<sup>14</sup> yields the following results:

In No. BA326282, defendant received 760 actual custody credits. This consists of 190 full 4-day increments, for each of which defendant is entitled to 2 days of conduct credits, or 380 conduct credits. This results in total presentence custody credits of 1,140 days.

In No. BA286996, defendant received 1,189 actual custody credits. This consists of 297 full 4-day increments, for each of which defendant is entitled to 2 days of conduct

---

<sup>13</sup> The question of the retroactivity of the amendments to section 4019 is currently before the California Supreme Court. (*People v. Brown* (2010) 182 Cal.App.4th 1354, review granted June 9, 2010, S181963; *People v. Eusebio* (2010) 185 Cal.App.4th 990, review granted Sept. 22, 2010, S184957; *People v. Keating* (2010) 185 Cal.App.4th 364, review granted Sept. 22, 2010, S184354.) Inasmuch as resolution of this question does not affect our calculation of defendant’s presentence custody credits, we need not resolve the question.

<sup>14</sup> In *In re Marquez*, the California Supreme Court explained that, under subdivisions (b), (c) and (f) in the original version of section 4019, conduct credits are given in increments of four days and rounding up is not permitted. (*In re Marquez*, *supra*, 30 Cal.4th at p. 26.)

credits, or 594 conduct credits. This results in a total of 1,783 presentence custody credits. The judgment must be modified accordingly.

### **DISPOSITION**

In No. BA326282, the judgment is modified to strike the prior prison term enhancements under section 667.5, subdivision (b), and to award defendant 1,140 days of presentence custody credit, consisting of 760 days of actual custody credit and 380 days of conduct credit. As so modified, the judgment is affirmed.

In No. BA286996, the judgment is modified to award defendant 1,783 days of presentence custody credit, consisting of 1,189 days of actual custody credit and 594 days of conduct credit. As so modified, the judgment is affirmed.

The clerk of the court is directed to prepare corrected abstracts of judgment and forward copies to the Department of Corrections and Rehabilitation.

JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.